

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RODERICK GOLDEN,

Plaintiff,

-v-

5:21-CV-85

JOHN GAGNE *et al.*,

Defendants.

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APPEARANCES:

OF COUNSEL:

RODERICK GOLDEN

Plaintiff, Pro Se

208 Melrose Avenue

Syracuse, NY 13206

DAVID N. HURD

United States District Judge

**ORDER ON REPORT & RECOMMENDATION**

On January 25, 2021, *pro se* plaintiff Roderick Golden (“plaintiff”) filed this action alleging that the named defendants violated his constitutional rights. Dkt. No. 1. Plaintiff also moved to appoint counsel and to proceed *in forma pauperis*. Dkt. Nos. 2, 3.

On April 21, 2021, U.S. Magistrate Judge Thérèse Wiley Dancks granted plaintiff’s motion for leave to proceed *in forma pauperis* and denied plaintiff’s

motion to appoint counsel. Dkt. No. 6. Judge Dancks further advised by Report & Recommendation (“R&R”) that plaintiff’s complaint be dismissed without prejudice because it failed to provide sufficient information for the Court to review or for defendants to have fair notice of the claims against them. *Id.* This Court adopted Judge Dancks’s R&R on May 13, 2021. Dkt. No. 7. Thereafter, plaintiff filed an amended complaint and another motion to appoint counsel. Dkt. Nos. 11, 12.

On July 21, 2021, Judge Dancks conducted an initial review of the amended complaint and advised by R&R that the pleading be accepted for filing. Dkt. No. 13. In particular, Judge Dancks recommended that plaintiff’s: (1) Fourth Amendment false arrest claim against defendants Gagne and Root survive initial review; (2) Fourth Amendment malicious prosecution claim against defendant Gagne survive initial review. *Id.* However, Judge Dancks recommended that plaintiff’s remaining claims be dismissed for failure to state a claim. *Id.* Judge Dancks further denied plaintiff’s motion for the appointment of counsel. *Id.*

Plaintiff has filed objections. Dkt. No. 14. Upon *de novo* review of the portions to which plaintiff has objected, the Report & Recommendation will be accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

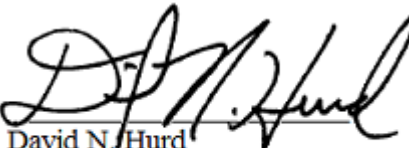
Therefore, it is

ORDERED that

1. The Report & Recommendation is ADOPTED;
2. Plaintiff's amended complaint is accepted for filing;
3. Plaintiff's Fourth Amendment false arrest claim against defendants Gagne and Root survives initial review and requires a response;
4. Plaintiff's Fourth Amendment malicious prosecution claim against defendant Gagne survives initial review and requires a response;
5. Plaintiff's remaining claims are dismissed pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief can be granted;
6. The Clerk of the Court is directed to TERMINATE DA Fitzpatrick, Judge Marks, and Furlong as defendants;
7. The Clerk of the Court shall provide plaintiff with blank summonses for service upon defendants Gagne and Root;
8. The plaintiff shall complete these summonses and provide them to the Clerk within twenty-one days from the issuance of this opinion;
9. Upon receipt from plaintiff of the completed summonses, the Clerk shall issue and forward them, along with a copy of the operative complaint and a packet containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon the defendants; and
10. A response to the complaint shall be filed by defendants or their counsel as provided for in the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: August 26, 2021  
Utica, New York.



David N. Hurd  
U.S. District Judge